84-1867

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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MARY L. GILLIES,
Petitioner,

v.

GEORGE DELOZIER, JR., et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the court of appeals err in holding that a state may constitutionally deny a citzen any remedy for physical injuries suffered as a result of the negligence of a state official, regardless of the seriousness of the injuries suffered, and in holding that a citizen has a constitutionally protected interest only in her tangible property, not in her body?

2. Did the court of appeals err in holding that, even were it to find that a citizen has a constitutionally protected interest in her body, this Court's decision in Parratt v. Taylor, 451 U.S. 527 (1981), extends to liberty as well as property interests and bars a suit under 42 U.S.C. §1983 for damages by a citizen alleging injuries as a result of the negligence of a state official as long as a state remedy exists?

3. Did the court of appeals err in holding that a meaningful state remedy, as required by this Court's decision in Parratt v. Taylor, 451 U.S. 527 (1981), was available to a citizen who alleged personal injuries resulting from the negligence of a state official where the official relies on a defense of sovereign immunity, and the court of appeals could not guarantee that soverreign immunity would not, in fact, bar the citizen's recovery in state court?

LIST OF ALL PARTIES

1. MARY L. GILLIES

   PETITIONER (PLAINTIFF/APPELLANT below)

2. GEORGE DELOZIER, JR., individually and as Deputy Sheriff for St. Mary's County, Maryland

3. GEORGE GIBSON, individually and as Deputy Sheriff for St. Mary's County, Maryland

4. EUGENE GARDINER CRAWFORD

5. VIRGINIA CRAWFORD

6. ST. MARY'S SQUARE MERCHANTS ASSOCIATION, an unincorporated body

7. S.L. NUSBAUM & COMPANY, INC., a body corporate, individually and as a member of the ST. MARY'S SQUARE MERCHANTS ASSOCIATION

   RESPONDENTS (DEFENDANTS/APPELLEES below)

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REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS AND OPINIONS

PARRATT v. TAYLOR, 451 U.S. 527 (1981)

DANIELS v. WILLIAMS, 748 F.2d 229 (4th Cir. 1984) cert. granted 469 U.S. _____ (1985) (No. 84-5872, 1984 Term)

PER CURIAM OPINION - United States Court of Appeals for the Fourth Circuit Hall and Murnaghan, Circuit Judges, and Butzner, Senior Judge, Decided March 6, 1985

MEMORANDUM OPINION - United States District Court for the District of Maryland, Ramsey, District Judge, Decided August 4, 1983

GROUNDS FOR JURISDICTION

Petitioners brought this action under 42 U.S.C. §§ 1983, 1985 and 1986, with jurisdiction grounded in 28 U.S.C. §§1331 and 1343(1), (2), (3) and (4). She appealed the district court's dismissal of her action pursuant to 28 U.S.C. §1291. She petitions for certiorari to this Court pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment XIV Section 1:

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law.

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. 1343(1):

To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42;

* * * *

STATEMENT OF THE CASE

The facts of this case are simple. The issues presented by the questions raised are similar, if not identical to those found in Daniels v. Williams, 748 F.2d 229 (4th Cir. 1984) cert. granted 469 U.S. ____ (1985)(No. 84-5872, 1984 Term).

Mary Gillies, petitioner, was a citizen of Maryland and of the United States, when on September 4, 1982, she entered the public parking area in a shopping center located in St. Mary's County, Maryland, for the purpose of shopping in one of the retail stores located there. While there, she was struck by an ultra-light aircraft after two sheriff's deputies negligently permitted the pilot, Crawford, to take off from the shopping center parking lot in violation of the Maryland Aviation Act. The deputies had

directed petitioner to an apparent place of safety along with other pedestrians, and otherwise assisted Crawford in his take off efforts. The petitioner brought her action against the respondents under federal law to avoid respondent's sovereign immunity defense in state court.

Petitioner alleged in her suit, filed pursuant to 42 U.S.C. §1983, that she was struck by said aircraft, causing physical injuries to her body. That this was due to the negligence of the respondents Delozier and Gibson, who while deputies for St. Mary's County, were acting as public officials for the State of Maryland. The other respondents, (Crawford, Crawford, St. Mary's Square and Nusbaum & Co.) were sued for conspiracy pursuant to 42 U.S.C. §1985 and all the respondents were sued for negligently failing to prevent the

conspiracy pursuant to 42 U.S.C. §1986.

The United States District Court for the District of Maryland held that this Court's decision in Parratt v. Taylor, 451 U.S. 527 (1981), barred a federal action and dismissed petitioner's actions without prejudice to permit her to proceed with her negligence claim in state court. Judgment was entered for the respondents on August 4, 1983.(15 A). A panel of the United States Court of Appeals for the Fourth Circuit agreed. (16 A). The panel, in its unpublished per curiam opinion decided March 6, 1985, stated no reasons other than to briefly state this petitioner failed to allege a deprivation of a right protected by the Constitution or laws of the United States under Parratt v. Taylor, supra, and that her personal injury does not amount to

a loss of liberty under Daniels v. Williams, supra. (19 A). Thereafter, the panel affirmed the dimissal of petitioner's action under 42 U.S.C. §1985 under the rationale of Griffith v. Breckenridge, 403 U.S. 88 (1971), and affirmed the dismissal of petitioner's action under 42 U.S.C. §1986 because it was derivative to her claim under 42 U.S.C. §1985. (20 A).

ARGUMENT FOR ALLOWANCE OF THE WRIT

I. A STATE MAY NOT CONSTITUTIONALLY DENY A CITIZEN A REMEDY FOR PHYSICAL INJURIES SUFFERED AS A RESULT OF THE NEGLIGENCE OF A STATE OFFICIAL REGARDLESS OF THE SERIOUSNESS OF THE INJURIES SUFFERED SINCE A CITIZEN HAS A CONSTITUTIONALLY PROTECTED INTEREST IN HER BODY AS WELL AS IN PROPERTY

II. THERE IS NO GREATER REASON TO READ §1983 AS PROVIDING A FEDERAL REMEDY FOR A LIBERTY DEPRIVATION THAN FOR A PROPERTY DEPRIVATION AS LONG AS STATE COURTS AFFORD ADEQUATE, MEANINGFUL REMEDIES FOR DEPRIVATIONS OF BOTH LIBERTY AND

PROPERTY

III. NO MEANINGFUL REMEDY IS CURRENTLY AVAILABLE IN MARYLAND COURTS FOR NEGLIGENT CONDUCT BY A STATE OFFICIAL

IV. TO AVOID WASTING SCARCE JUDICIAL RESOURCES AND TO ASSURE THAT A MEANINGFUL, ADEQUATE REMEDY IS PROVIDED FOR CITIZENS WHOSE PROTECTED LIBERTY AND PROPERTY INTERESTS ARE DAMAGED BY TORTIOUS CONDUCT ON THE PART OF OFFICIALS ACTING UNDER COLOR OF STATE LAW, FEDERAL COURTS SHOULD ENETERTAIN ACTIONS UNDER §§ 1983, 1985 AND 1986 WHEN A DEFENSE OF SOVEREIGN IMMUNITY IS RAISABLE IN STATE COURT UNLESS THE STATE PROVIDES AN IMMEDIATE AND FINAL MEANS FOR A PLAINTIFF TO ASSURE THAT THE DEFENSE IS UNAVAILABLE

The issues raised by this petitioner are substantively the same as those raised by Roy E. Daniels in his brief on the merits filed with this Court. See Daniels v. Williams, supra. For the sake of brevity, this petitioner will not recite herein the lengthy and well reasoned arguments made by Professor Stephen Allen

Saltzburg. Professor Saltzburg has graciously given counsel for this petitioner permission to adopt and incorporate by reference those arguments as they apply to the facts of this case.

There are similarities and differences between the two cases. The similarities are legal and as stated in the arguments. The differences are factual. Firstly, this petitioner was not in the custody of the state official, but subject to their direction and control. Secondly, she makes her claim as a citizen and not a prisoner.

The lower courts are confused as to when 42 U.S.C. § 1983 is available as a remedy for persons who claim that they have suffered physical injuries or property damage as a result of wrongful actions by officials acting under color of

state law. The confusion surrounds several questions: May a complaint that alleges a negligent act by a person acting under color of state law state a claim under 42 U.S.C. § 1983? If so, does it matter for purposes of 42 U.S.C. § 1983 whether the negligent act injures liberty or property interests? When is a state remedy sufficiently "meaningful" to satisfy the demands of the Fourteenth Amendment so that an action under 42 U.S.C. § 1983 is barred?

Petitioner believes that the legislative history of 42 U.S.C. § 1983 and this Court's construction of the statute support four arguments. She believes that if these arguments are accepted, much of the current confusion surrounding § 1983 will dissipate as lower courts will have clearer guidance as to the scope of the

statute, and the relationship between state and federal courts envisioned when § 1983 was adopted will be restored.

First, petitioner argues that § 1983 envisions that actions like hers should be heard in state courts and that as long as state courts are prepared to protect persons who are in the state's custody, or within the control of state of officials, § 1983 should not be read to create a cause of action for simple torts. In this argument petitioner urges that the Court accept neither a distinction between liberty and property interests nor a distinction between intentional and negligent torts.

Instead, petitioner suggests that a line be drawn between constitutional claims arising at the moment that an official acts and constitutional claims

arising only when no remedy is provided by the state following official action. The first category of claims always would be actionable under 42 U.S.C. § 1983, but the second category would give rise to a cause of action only where a state failed to provide the constitutionally required remedy.

Second, petitioner asks this Court to recognize that liberty interests may arise under the Constitution or laws of the United States whereas property interests often are created by state law. Although petitioner urges that both liberty and property interests generally should be treated alike insofar as 42 U.S.C. § 1983 is concerned, he asks this Court to recognize that federal courts are not limited to an examination of state law when they are asked to decide

whether a liberty interest exists in any given case involving actions by state officers.

Third, petitioner urges that a state remedy is not sufficiently meaningful to satisfy the demands of the Fourteenth Amendment where the state has established a bar to suit in state court that effectively negates any state cause of action to remedy a deprivation of liberty or property. Thus, a bar to suit in state court that is too broad leaves the doors of federal courts open to suits brought under 42 U.S.C. § 1983.

Fourth, it is important that there be a clear rule for determining early in a case whether a state remedy is sufficiently meaningful to satisfy the demands of the Fourteenth Amendment so that an action under §1983 will not be permitted.

Without a clear rule, litigants will litigate simultaneously in state and federal court and waste the resources of both courts. The result of uncertainty is not only to delay remedies for deprivations of liberty and property, but also to delay the prompt disposition of litigation and to impair the efficiency of state and federal judicial systems. A workable rule should provide that a federal court will entertain a citizen's action alleging a negligent or intentional deprivation of liberty or property by an official acting under color of state law where: that official invokes a sovereign immunity defense; and the state has not provided an immediate and final means for a plaintiff to establish that the defense is unavailable.

In support of Professor Saltzburg's

first and second arguments, consider how 28 U.S.C. 1343 affects the issue. It states in relevant part:

28 U.S.C. 1343.
Civil rights and elective franchise

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in futherance of any conspiracy mentioned in section 1985 of Titile 42 (42 U.S.C §1985);
> (emphasis supplied.)

Since a conspiracy to do an illegal act is derivative to the doing of an illegal act, resulting in damage or injury, is it not likely that Congress has expressed its will to declare that the safety and

well-being of the people is intended to be a liberty interest which is to be protected and that § 1983 was not intended to be confined to protecting property interests? There is nothing in the language of § 1983 or in its history to suggest that liberty and property were distinguished by the drafters in a way that would permit a person to sue for a property deprivation in federal court but not for a liberty deprivation which resulted from identical tortious conduct. This would then render § 1343 and § 1983 compatible and not inconsistent with one another. Ergo, the reasoning of Judge Phillips in Daniels, supra, would seem to be the appropriate reasoning to be applied in § 1983 actions involving personal injury.

Professor Saltzburg's third and fourth

arguments are well taken but have a different significance when Maryland law is applied. First, it is impossible for sovereign immunity to be waived other than by a clear and unequivocal legislative act. See Bradshaw v. Prince George's County, 284 Md. 294, 396 A.2d 255 (1979), and Quecedo v. Montgomery County, 264 Md. 590, 287 A.2d 257 (1972).

Maryland has been more definitive than Virginia in the application of sovereign immunity. Unlike Virginia, the test is not whether the employee was acting within the scope of his employment.

Maryland has distinguished between governmental immunity extended to employees of municipalities and the sovereign immunities extended to state officials. See James v. Prince George's County, 288 Md. 315, 418 A.2d 1173 (1980), and Brad-

shaw v. Prince George's County, supra. In James, supra, the application of sovereign immunity is found to turn on the nature of the employees act. Assuming the state employee charged with the wrongful conduct is a public official, he must have acted in a discretionary, as opposed to ministerial capacity for the immunity to be a defense. If the act is ministerial, then sovereign immunity does not attach and a claimant would have a cause in state court. If the discretionary act was maliciously committed, immunity does not attach and there is a cause in state court. Id. 418 A.2d at p. 1178. In accordance with James, supra, the concern enuniciated in Parratt v. Taylor, supra, that every automobile accident case would lead to a § 1983 claim is non-existent because Maryland has

clearly declared such conduct to be ministerial. That claimant has a remedy in state court. However, applying the same doctrine in state court would absolutely preclude this petitioner from a state court remedy. Although respondents Delozier and Gibson at the time of their rongful acts were municipal employees, they were agents of the state in matters concerning the enforcement of state statutes of which we are concerned here. See Bradshaw v. Prince George's County, supra and Wynkoop v. Hagerstown, 159 Md. 194, 150 A. 447 (1930). It is clear the conduct of the respondents (3A, 4A) was being performed as part of a discretionary function. See Quecedo v. Montgomery County, supra. Therefore, unless the claimant is prepared to clearly show the acts were committed maliciously, she has no state

court remedy.

As Professor Saltzburg expressed before the court of appeals, there are many pitfalls and dangers facing the confused claimant who is required to go back and forth between federal and state court. Since the point was last postulated, the court of appeals has decided Kutzik v. Young, 730 F.2d 149 (4th Cir. 1984). As a result, the litigant who attempts to overcome a defense of qualified immunity in state court and fails, faces the defense of res judicata in a subsequent action filed pursuant to 42 U.S.C. § 1983. A litigant in that event has no state remedy and has no federal remedy.

CONCLUSION

For the reasons stated above, and for the reasons stated in Daniels v. Williams supra, the petition for writ of certiorari

should be granted. In the event it appears inappropriate to grant the writ of certiorari at this time, it is prayed that it not be denied, but rather that it be held in abeyance pending a decision in Daniels v. Williams, supra, for guidance for the court of appeals on a remand.

Respectfully submitted,

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APPENDIX

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Memorandum and Order
United States District Court for
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per Ramsey
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Per Curiam Opinion
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARY L. GILLIES, *

Plaintiff *

v. * CIVIL ACTION
NO. R-83-1733

GEORGE DELOZIER, JR. *
ET AL.,

Defendant *

* * * * * * * * * * *

MEMORANDUM AND ORDER

Currently before the Court are defendants' motions to dismiss pursuant to Fed.R.Civ.P. 12(b). In support, defendants generally assert that plaintiff fails to state a claim upon which relief can be granted and that the Court is without subject matter jurisdiction. Oral argument is unnecessary and the Court rules pursuant to Local Rule 6 (D. Md. 1982). For the following reasons the Court grants defendants' motion to dismiss.

I. Statement of Facts

On September 4, 1982, plaintiff Mary Gillies visited a shopping center in St. Mary's County, Maryland which was then owned by defendant S.L. Nusbaum Co., Inc. ("Nusbaum"). The shopping center known as St. Mary's Square was conducted as an unincorporated association operated by the merchants, businesses and retail lessees under the name of St. Mary's Square Merchants Association ("St. Mary's). This association of which defendant Nusbaum was a member, hired defendants Eugene Crawford and Virginia Crawford to demonstrate the use of an ultralight aircraft for a promotional exhibition. The exhibition was to take place in the parking lot of the shopping center. On this date, defendants Delozier and Gibson, both of whom were deputies with the Sher-

iff's Department of St. Mary's County, blocked off vehicular and pedestrian traffic to enable the aircraft, driven by the defendant Crawford, to take off. While attempting to take off, the aircraft flew into a light pole, the impact of which caused the aircraft to falter and fly into the plaintiff, who along with a crowd of others was watching the demonstration.

This bizarre accident gave rise to the current action, in which Mary L. Gillies alleges, (1) a violation of her civil rights pursuant to 42 U.S.C. §1983 against defendants Delozier and Gibson; (2) a conspiracy to violate here civil rights pursuant to 42 U.S.C. §1985(3) against all defendants and (3) an action for neglect to prevent the conspiracy pursuant to 42 U.S.C. §1968 also against

all defendants.[1/]

II. Legal Discussion

The grant of a motion to dismiss pursuant to Rule 12(b) (6) is appropriate only when "...it appears beyond doubt that plaintiff can prove no set of facts in support of [her] claims which would entitled [her] to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In

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1/ Plaintiff alleges that the statutory grant of jurisdiction for these violations are 28 U.S.C. §1331 and 1343. The proper statutory grant of jurisdiction for the civil rights violations herein alleged is 28 U.S.C. §1343. 28 U.S.C. 1331 provides that, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States." Plaintiff's complaint alleges no violation of federal law or treaty, as already stated, the Constitutional claims are brought pursuant to §1343. Therefore, no claim is asserted that would confer jurisdiction upon this Court pursuant to §1331.

ruling upon the pending motion to dismiss, this Court must view the complaint in the light most favorable to plaintiff and resolve every doubt in her behalf. See Wright and Miller, Federal Practice and Procedure: Civil §1357 (1969) and cases cited therein. The plaintiff's allegations are to be taken as true for the purposes of ruling upon the pending motion. See id. and cases cited therein. See also Jenkins v. McKeithen, 395 U.S. 411, 421-22 (1969). Moreover, any inference that may reasonably be drawn or construed from plaintiff's complaint shall be considered together with the allegations of fact. Murray v. City of Milford, Connecticut, 380 F.2d 468, 470 (2d Cir. 1967); L.S. Good & Co. v. H. Daraff & Sons, Inc., 263 F. Supp. 635, 644 (N.D. W.Va. 1967).

A. Claims Under 42 U.S.C. §1983

Defendants Delozier and Gibson first seek to dismiss for lack of subject matter jurisdiction plaintiff's claims under 41 U.S.C. §1983. Essentially, defendants' argument is that plaintiff has failed to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b) (6). See Bell v. Hood, 327 U.S. 678, 681-83 (1946); Griffith v. Bell-Whitley Com. Action Agency, 614 F.2d 1102,1105 (6th Cir.) cert. denied, 447 U.S. 928 (1980).

To have an actionable claim under 42 U. S.C. §1983, plaintiff must allege two essential elements. First, the conduct complained of must have been done by some "person" acting under color of state law; and second, such conduct must have subjected the complainant to the deprivation

of rights, privileges or immunities secured by the Constitution and laws of the United States. Parratt v. Taylor, 451 U.S. 527 (1981)' Wirth v. Surles, 562 F.2d 319, 321 (4th Cir.), cert. denied, 435 U.S. 933 (1977).

Plaintiff's complaint satisfies the first requirement for an actionable §1983 claim. Delozier and Gibson are both deputies of the Sheriff's Department of St. Mary's County. On the day of the alleged wrong both defendants, while dressed in official sheriff's uniforms and while occupying an official sheriff's vehicle, arrived at the shopping center and proceeded to block off motor vehicle and pedestrian traffic to permit the other defendants to operate the aircraft.

As to the second element of a §1983 action nothing in the Fourteenth Amendment

protects against all deprivations of life, liberty, or property. Parratt, 451 U.S. at 537. Not every injury in which state official has played some part is actionable under §1983. Martinez v. California, 444 U.S. 277, 285 (1980); Baker v. McCollan, 443 U.S. 137 (1979).

Plaintiff asserts that because Delczier and Gibson failed to prevent other defendants from breaking the laws of Maryland, she was "subjected to a deprivation of said rights, privileges and immunities... the plaintiff sustained injuries and damages." However, 42 U.S.C. §1983 was intended to implicate only federal rights determined under federal substantive law, not ordinary state torts. Tucker v. Duncan, 499 F.2d 963 (4th Cir. 1974). The statute was not intended to convert "mere torts" into "constitutional torts"

simply because the alleged tortfeasor acts under the color of state law. Juncker v. Tinney, 549 F.Supp. 547, 583 (D. Md. 1982).

Although plaintiff has alleged a constitutional deprivation, it is apparent that whatever right forms the basis of her claim is not secured by the constitution or laws of the United States. In essence, her allegations amount only to a tort for which there is an adequate remedy in State court. It is this Court's determination that plaintiff can prove no set of facts to support an action under 42 U.S.C. §1983 that would entitle her to relief and therefore, the §1983 claim must be dismissed.

B. Claims Under 42 U.S.C. §1985(3)

Defendants next contend that the facts alleged in plaintiff's complaint do not

support an action pursuant to § 1985. Plaintiff alleges that all the defendants did "combine, scheme, confederate and conspire together with the specific intent to conspire for the common design and purpose of depriving, directly or indirectly, the plaintiff and all citizens then and there, of the equal protection of the laws [and] the equal privileges and immunities under the laws."

An action under 42 U.S.C. §1985(3) creates civil liability against persons who conspire to deprive another person or class of persons of "the equal protection of the laws or of equal privileges and immunities under the laws." While the statute extends to both public and private action, it was not intended to apply to all tortious, conspiratorial interferences with the rights of others.

Griffin v. Breckenridge, 403 U.S. 88, 101 (1971). Rather, to have an actionable claim under §1985, the plaintiff must show that she was deprived of "equal protection," or "equal privileges and immunities." This means that plaintiff must allege some racial, or perhaps otherwise class based, invidiously discriminatory animus behind the conspirators' action. Id.; see also Bellamy v. Mason's Stores, Inc., 508 F.2d 504, 506 (4th Cir. 1974); Hughes v. Ranger Fuel Corp., 467 F.2d 6, 10 (4th Cir. 1972); Schoonfield v. Mayor & City Council of Baltimore, 399 F. Supp. 1068, 1085 (D. Md. 1975); aff'd 544 F.2d 515 (4th Cir. 1976).

Because plaintiff has not alleged that the actions of the defendants were part of a general pattern of discrimination

aimed at a class or race of which plaintiff was a member, rather than aimed at plaintiff herself, and because plaintiff has not alleged that she was deprived of the equal enjoyment of rights secured by the law to all, plaintiff has failed to state an actionable claim under §1985(3). That portion of plaintiff's complaint must, therefore, be dismissed.

C. Claims Under 42 U.S.C. §1986

Once plaintiff's claim under §1985 falls, so must her claim under 42 U.S.C. §1986 because it is derivative of §1985. A failure to state a claim under §1985 necessarily precludes any action under the §1986. Schoonfield, 399 F.Supp. at 1087; see also Williams v. St. Joseph Hospital, 629 F.2d 448, 453 (7th Cir. 1980). Defendants' motion to dismiss the claim arising under §1986 is therefore

granted.

It is obvious that this action is one in tort, which is governed by the laws of the State of Maryland and should be litigated, if at all, in State court. There is no basis for the exercise of this Court's jurisdiction. Accordingly, for the reasons stated herein, it is this 4th day of August, 1983, by the United States District Court for the District of Maryland,

ORDERED:

1. That plaintiff's complaint be DISMISSED WITHOUT PREJUDICE to her right to raise her state claims, if any, in state court; and

2. That the Clerk of the Court shall mail copies of this Memorandum and Order to all counsel of record.

Norman P. Ramsey
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARY L. GILLIES, *

Plaintiff *

v. * CIVIL ACTION
NO. R-83-1733

GEORGE DELOZIER, JR. *
ET AL.

Defendant *

* * * * * * * * * * *

JUDGMENT

In accordance with the Memorandum and Order dated August 4th, 1983, and filed in the above entitled case, it is

ORDERED and ADJUDGED:

That judgment is hereby entered in favor of the defendants and against the plaintiff.

Norman P. Ramsey
United States
District Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNPUBLISHED

No. 83-1835

Mary L. Gillies,

Appellant,

versus

George Delozier, Jr., Individually and as Deputy Sheriff for St. Mary's County, Maryland; George Gibson, Individually and as Deputy Sheriff for St. Mary's County, Maryland; Eugene Gardiner Crawford; Virginia Crawford; St. Mary's Square Merchants Association, an Unincorporated Body and S.L. Nusbaum & Company, Inc., a Virginia Corporation,

Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Norman P. Ramsey, District Judge. (C/A No. 83-1733)

Submitted: February 7, 1985

Decided: March 6, 1985

Before HALL and MURNAGHAN, Circuit Judges and BUTZNER, Senior Circuit Judge.

(David M. Williams, on brief) for Appellant. (Edward J. Gorman, Jr., for Delozier and Gibson; Jess Joseph Smith, Jr. for Crawford and Crawford; Francis J. Ford, Ford & O'Neill, for St. Mary's Square and Nusbaum & Co., on brief) for Appellees.

PER CURIAM:

Mary Gillies appeals the district court's dismissal of this suit filed pursuant to 42 U.S.C. §§1983, 1985(3), and 1986. For the reasons given below, we affirm.

Gillies alleges that she was struck by an ultralight aircraft, which flew off course while it was being used as a promotional exhibition in the parking lot of a shopping center. She seeks to hold liable under §1983 two sheriff's deputies who had blocked off the parking lot to traffic in anticipation of the exhibition. She seeks to hold liable under §1985 and §1986 the parties who were demonstrating the aircraft, the shopping center merchants' association, and one of the businesses in that association, in addition to the two deputies.

We think the Gillies' claim under 42 U. S.C. §1983 fails because she has not alleged a deprivation of a right protected by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527 (1981). A personal injury of the sort alleged here does not amount to a loss of liberty under the Fourteenth Amendment. Daniels v. Williams, 748 F.2d 229 (4th Cir. 1984).

Gillies' claim under 42 U.S.C. §1985 fails because she has not alleged any facts supporting her conclusory allegations that the defendants conspired to deprive her of the equal protection of the laws and equal privileges and immunities under the laws. See Griffin v. Breckenridge, 403 U.S. 88 (1971).

Gillies claim under 42 U.S.C. §1986 fails because a claim under that statute,

by the statutory terms, is derivative of a claim under 42 U.S.C. §1985. Schoonfield v. Mayor & City Council of Baltimore, 399 F.Supp. 1068, 1087 (D. Md. 1975), aff'd, 544 F.2d 515 (4th Cir. 1976).

For the foregoing reasons, and because the dispositive issues have recently been authoritatively decided, we dispense with oral argument and affirm.

AFFIRMED.

Supreme Court, U.S.
FILED
SEP 12 1985
JOSEPH F. [illegible], JR.
CLERK

No. 84-1867

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MARY L. GILLIES,
Petitioner,

v.

GEORGE DELOZIER, JR., *et al.*,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF RESPONDENTS S.L. NUSBAUM & CO., INC. AND ST. MARY'S SQUARE MERCHANTS ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals properly rule that petitioner's claim under 42 U.S.C. § 1983 fails because she has not alleged a deprivation of a right protected by the Constitution or laws of the United States.

II. Did the Court of Appeals properly rule that petitioner's claim under 42 U.S.C. § 1985 fails because she has not alleged any facts supporting her conclusory allegations that the defendants conspired to deprive her of the equal protection of the laws and equal privileges and immunities under the laws.

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BRIEF OF RESPONDENTS S.L. NUSBAUM & CO., INC. AND ST. MARY'S SQUARE MERCHANTS ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents S.L. Nusbaum & Co., Inc., and St. Mary's Square Merchants Association respectfully request that this Court deny the petition for a writ of certiorari seeking review of the opinion of the Court of Appeals for the Fourth Circuit in this case. That opinion is set forth at Pet. App. 16a-20a.

COUNTER-STATEMENT OF THE CASE

On September 4, 1982, the petitioner Mary Gillies, visited a shopping center, known as St. Mary's Square,

in St. Mary's County, Maryland, which was then allegedly owned by defendant, S.L. Nusbaum Company, Inc. ("Nusbaum"). The merchants, businesses and retail lessees operating at the shopping center had formed an unincorporated association under the name of St. Mary's Square Marchant's Association ("Merchants"). Defendants Eugene Crawford and Virginia Crawford were hired to exhibit an ultralight aircraft in the shopping center parking lot for promotional purposes.

At approximately 7:00 p.m., defendants Delozier and Gibson, both of whom were deputies with the Sheriff's Department of St. Mary's County, allegedly blocked off vehicular and pedestrian traffic to enable the ultralight, operated by defendant Eugene Crawford, to take off. While attempting to take off, the ultralight struck a light pole, the impact of which caused the aircraft to falter and strike the petitioner, a bystander.

Petitioner filed suit for personal injuries in the District Court for the District of Maryland alleging that (1) the deputies, Delozier and Gibson, had acted under color of state law to deprive her of her civil rights pursuant to 42 U.S.C. § 1983; (2) all defendants had conspired to violate her civil rights pursuant to 42 U.S.C. § 1985; and (3) that all defendants had neglected to prevent the conspiracy pursuant to 42 U.S.C. § 1986.

All defendants filed motions to dismiss pursuant to Fed. R. Civ. P. 12(b) asserting that the plaintiff had failed to state a claim upon which relief could be granted and that the court was without subject matter jurisdiction. By Memorandum and Order filed on

August 5, 1983, the trial court granted the motions of all defendants.

Petitioner appealed to the Fourth Circuit which affirmed the Trial Court in a *per curiam* decision rendered on March 6, 1985.

REASONS FOR DENYING THE WRIT

In the first instance, this case presents a straightforward question of whether the personal injury alleged here amounts to a loss of liberty under the Fourteenth Amendment or the deprivation of a right protected by the Constitution or laws of the United States which would give rise to an action under 42 U.S.C. § 1983.

The second issue involves whether the petitioner has set forth a claim under 42 U.S.C. § 1985(3) which gives rise to civil liability against persons who conspire to deprive another person or class of persons of "the equal protection of the laws or of equal privileges and immunities under the laws". The resolution of this issue necessarily disposes of the third issue, the claim under § 1986, as § 1986 is purely derivative of § 1985.

I. Petitioner's Claim Under 42 U.S.C. § 1983 Fails as She Has Not Alleged a Deprivation of a Right Protected by the Constitution or Laws of the United States.

The § 1983 action lies only against the deputy sheriffs, Delozier and Gibson, and the respondents Nusbaum and Merchants will not address the applicability of that section in this brief. To the extent that a response is required by the Court these respondents would rely upon the *per curiam* opinion of the Fourth

Circuit (Pet. App. 16a-20a), the Memorandum Opinion and Order of the District Court (Ramsey, J.) (Pet App. 2a-15a) and the brief of respondents Delozier and Gibson.

II. Petitioner's Claim Under 42 U.S.C. § 1985(3) Fails Because She Has Not Alleged Any Facts Supporting Her Conclusory Allegations That the Defendants Conspired To Deprive Her of the Equal Protection of the Laws and Equal Privileges and Immunities Under the Laws.

At the outset respondents are constrained to observe that petitioner has evidently abandoned her appellate efforts with regard to § 1985 as she does not address this claim in her Petition which is devoted entirely to her § 1983 claim. Although the petitioner has waived by omission what she is reluctant to waive by expression, these respondents would address the § 1985 issue briefly.

In justifying her § 1985(3) claim, petitioner alleges that all the defendants did "combine, scheme, confederate and conspire together with the specific intent to conspire for the common design and purpose of depriving, directly or indirectly, the plaintiff and all citizens then and there, of the equal protection of the laws and the equal privileges and immunities under the law".

An action under 42 U.S.C. § 1985(3) creates civil liability against any persons who conspire to deprive another person or class of persons of "the equal protection of the laws or of equal privileges and immunities under the laws." While the statute extends to both public and private action, respondents submit

that neither intent by the Congress, nor interpretation by the Courts, has given rise to a general federal tort law. The statute was simply not intended to apply to all tortious, conspiratorial interferences with the rights of others.

> The constitutional shoals that would lie in the path of interpreting § 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose—by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. . . . The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all. *Griffin* v. *Breckenridge,* 403 U.S. 88, 102 (footnotes omitted).

In the present case Gillies has failed to state an actionable claim under § 1985(3) as she has not alleged any facts supporting her conclusory allegations that the defendants conspired to deprive her of the equal protection of the laws or equal privileges and immunities under the laws, nor has she alleged that the actions of the defendants were aimed at an identifiable, protected class of which she was a member.

Once petitioner's claim under § 1985 falls, so must her claim under 42 U.S.C. § 1986 because it is derivative of § 1985. A failure to state a claim under § 1985 necessarily precludes any action under § 1986.

CONCLUSION

The facts here at best suggest that one or more of the defendants was negligent in some fashion and that as a consequence of such negligence, the plaintiff suffered injuries. Notwithstanding plaintiff's bald allegations of constitutional deprivation, conspiracy and discrimination, it is obvious that this action is one in tort which is governed by the laws of the State of Maryland and should be litigated, if at all, in state court.

Respondents respectfully request that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

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(3)

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Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF RESPONDENTS GEORGE DELOZIER & GEORGE GIBSON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals properly rule that petitioner's claim under 42 U.S.C. § 1983 fails because she has not alleged a deprivation of a right protected by the Constitution or laws of the United States

II. Did the Court of Appeals properly rule that petitioner's claim under 42 U.S.C. § 1985 fails because she has not alleged any facts supporting her conclusory allegations that the defendants conspired to deprive her of the equal protection of the laws and equal privileges and immunities under the laws.

ADDITION TO THE LIST OF ALL PARTIES

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The respondents George Delozier, Jr. and George Gibson respectfully request that this Court deny the petition for a writ of certiorari seeking a review of the opinion of the Court of Appeals for the Fourth Circuit in this case. That opinion is set forth at Pet. App. 16a-20a

COUNTER-STATEMENT OF THE CASE

The respondents Delozier and Gibson adopt the counter-statement of the case as set forth in the brief of respondents

S.L. Nusbaum & Co., Inc., and St. Mary's Square Merchants Association.

ARGUMENT FOR DENYING THE WRIT

I. Personal Injury Allegedly Suffered As A Result Of A State Official's Simple Negligence Does Not Amount To A Loss of Liberty Under The Constitution Or Laws Of The United States

A. Personal Injury Allegedly Suffered As A Result Of A State Official's Simple Negligence Is Not Actionable Under 42 U.S.C. § 1983

To maintain an action under 42 U.S.C. § 1983, two elements must be alleged. First, the conduct complained of must have been done by one acting under the color of state law; and second, said conduct must deprive the person of the rights, privileges or immunities secured by the Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). It is true that the right not to be subjected to physical injury is a liberty interest. See *Juncker v. Tinney III et al.*, 549 F. Supp. 574, 576 (1982). The petitioner, however, has failed to allege deprivation of a liberty interest which is protected by the Constitution or laws of the United States.

The petitioner claims she sustained injuries as a result of the negligent failure of respondents Delozier and Gibson to prevent others from violating Maryland law. The petitioner also alleges that these respondents actively participated in that violation. The first element giving rise to a § 1983 action has been met. Delozier and Gibson are sheriffs who were acting in their official capacities at the time of the accident. However, the mere fact that the conduct of an individual acting under the color of State law results in injury does not necessarily amount to a deprivation of rights actionable under 42 U.S.C. § 1983. *Parratt v. Taylor, supra;*

Martinez v. California, 444 U.S. 277 (1980); *Baker v. McCollum*, 443 U.S. 137 (1979). To allege a deprivation of a liberty interest protected under the Fourteenth Amendment something more than mere negligence is required.

A constitutional deprivation "connotes an intentional act denying something to someone, or, at the very least, a deliberate decision not to act to prevent a loss." *Parratt*, 451 U.S. at 548 (Powell J. concurring). While the petitioner couches her claim in terms of a constitutional deprivation, the facts allege state only a claim for a common law tort. This Court has consistently rejected the notion that all common law torts committed by public officials acting under the color of state law automatically constitute violations of § 1983. *See Baker v. McCollum*, *supra*, *Estelle v. Gamble*, 429 U.S. 97 (1976); *Paul v. Davis*, 424 U.S. 693 (1976).

The proposition that mere negligence does not rise to the level of a constitutional deprivation of a liberty interest is illustrated by *Baker v. McCollum*, *supra*. In *Baker v. McCollum*, *supra*, the plaintiff had been in prison for eight (8) days after being arrested on a facially valid warrant. An action was brought under 42 U.S.C. § 1983 alleging a deprivation of a liberty interest without due process of law. The Court rejected the plaintiff's contention. It was pointed out that § 1983 does not impose liability for violations of the duty of care arising out of tort law.

In *Estelle v. Gamble*, *supra*, the Court held that medical malpractice does not become a constitutional violation simply because the victim is a prison inmate. The Court found that the mistreatment allegedly suffered by the complainant constituted nothing more than ordinary medical malpractice, which is actionable only under state law, and not under federal law. In order to state a cognizable claim under § 1983 for medical malpractice, the Court conclude that

"acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs would have to be alleged."

In *Paul v. Davis*, *supra*, the plaintiff brought suit for defamation against state officials who distributed a flyer which identified the plaintiff as an active shoplifter. The plaintiff urged that her claim was actionable under 42 U.S.C. § 1983. The Court rejected plaintiff's argument stating that the alleged injury to plaintiff's reputation did not involve a liberty interest invoking the Fourteenth Amendment simply because it was perpetrated by a public official. Indeed, the Court specifically stated that such a reading of the Fourteenth Amendment would make § 1983 "a font of tort law to be super imposed on whatever systems may already be administered by the states." *Paul*, 424 U.S. at 699, 701.

The foregoing cases indicate that something more than mere negligence is required before an injury caused by a person acting under color of state law rises to the level of a constitutional deprivation. The plaintiff here has suffered an injury which was the result of at most mere negligence. There has been no constitutional deprivation of liberty. The petitioner has a tort claim in state court and no cognizable claim under 42 U.S.C.§ 1983.

B. The Grant Of Certiorari In *Daniels V. Williams* Makes Certiorari In This Case Inappropriate

The petitioner contends that the issues she raises are substantively the same as those raised by Roy E. Daniels in his brief on the merits filed with this Court. *See Daniels v. Williams*, 748 F.2d 229 (4th cir. 1984) *cert granted*, 469 U.S. ____ (1985) (No. 84-5872, 1984 term). In so contending the petitioner gives this Court a reason to deny her petition for writ of certiorari.

The Court of Appeals for the Fourth Circuit in *Danield v. Williams, supra,* decided that personal injury allegedly resulting from the negligent act of a state official is not a protectable liberty interest under the due process clause of the Fourteenth Amendment. On the basis of that decision, the Court of Appeals for the Fourth Circuit affirmed the holding of the District Court in this case. As the petitioner here points out, the issues in *Daniels* and *Gillies* are identical. The issues raised by the petitioner in *Gillies* add nothing to the issues presently before the Court in *Daniels*. Consequently, this court's understanding of the issues presented in *Daniels* and its decision-making process will not be enhanced by what would be a necessarily duplicative, unproductive review of this case.

II. Petitioner Has An Adequate Remedy At State Law Notwithstanding Maryland's Doctrine of Sovereign Immunity

A. The Grant of Certiorari In *Daniels v. Williams* Makes Certiorari In This Case Inappropriate

The respondents Delozier and Gibson reiterate the views expressed above in paragraph I (B). Granting the petition in *Gillies* would add nothing to the issues presently before the Court in *Daniels*. Petitioner's writ, therefore, should be denied.

B. Petitioner Has An Adequate Post Deprivation Remedy Under State Law Which Satisfies The Requirements Of Due Process

An issue before the Court in *Daniels, supra,* is whether or not allegations of a negligent deprivation of a liberty interest state a claim under 42 U.S.C. § 1983. Even should the Court answer that question in the affirmative, petitioner's writ should still be denied on the basis of the Court's holding in *Parratt, supra.*

The Court in *Parratt, supra,* ruled that allegations of negligence by a state official amounted to a constitutional deprivation of a property interest. Even so, the plaintiff in *Parratt, supra,* still had no actionable claim under 42 U.S.C. § 1983, because there was no violation of the due process clause of the Fourteenth Amendment. The Court found that the plaintiff had an adequate remedy at state law to redress any loss suffered. Applying the Court's analysis in *Parratt, supra,* to this case, the issue before the Court becomes is whether or not the remedy available to the petitioner under state law satisfies the requirements of procedural due process.

All that is needed to satisfy due process standards is that petitioner be provided with "an opportunity granted at a meaningful time and in a meaningful manner for [a] hearing appropriate to the nature of the case". *Boddie v. Connecticut,* 401 U.S. 371, 378 (1971). Maryland provides the petitioner with such a hearing. Under Maryland law the petitioner has a common law tort action for negligence. Indeed, petitioner has filed a negligence action in the U.S. District Court for the District of Maryland.

The petitioner in her brief contends that the availability of the defense of sovereign immunity violates due process. This argument is untenable. By making this argument, the petitioner seems to equate "adequate remedy" with compensation. The availability of a remedy in state or federal court would be seriously affected if the respondents were to prevail on any affirmative defense. If the availability of the affirmative defenses of contributory negligence or assumption of the risk does not violate procedural due process, it is inconceivable that the defense of sovereign immunity should be treated any differently. See *Ferri v. Ackerman,* 444 U.S. 193, 198 (1979), *Juncker,* 549 F.Supp. at 580.

The availability of an affirmative defense to the respondents is irrelevant to the question before the Court. Just as with any other affirmative defense a plea of sovereign immunity might deprive the petitioner of a hearing on the merits. But a hearing on the merits is not required to satisfy due process in every case. *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 438 (1982). The petitioner has not been deprived of her right to present a claim or to be heard. Due process requires only that the petitioner be allowed to bring a claim in state court and be heard on the issue of sovereign immunity by a court with the power to fully compensate the petitioner for her loss. See *Parratt*, 451 U.S. at 544. The courts in Maryland afford petitioner that opportunity.

C. Maryland's Qualified Good-Faith Immunity Defense Is Virtually The Same As The Good Faith Immunity Defense Which Is Available In § 1983 Actions

Petitioner contends that the potential availability of Maryland's qualified sovereign immunity defense violates procedural due process. In so contending, the petitioner ignores the fact that a similar defense may be raised in § 1983 actions. Under both Maryland and Federal law, a defendant may raise good faith immunity as a defense if (1) he is a public official, *Wood v. Strickland*, 420 U.S. 308, 316 (1975), *James v. Prince George's County*, 288 Md. 315, 323-324, 418 A.2d 1173 (1980) and (2) he was performing a discretionary act, *Wood, supra*, 420 U.S. at 319, *James, supra*, 288 Md. at 323-324. And under both Maryland and Federal law the defendant is immune from liability only if he acted without malice. *Wood*, 420 U.S. at 322, *James*, 288 Md. at 323.

There is an additional requirement under federal law that the defendant may not have known or may not have had reason to know that his actions would violate plaintiff's

constitutional rights. *Wood*, 42 U.S. at 322. With this exception the defenses are identical. There is no principled reason to support the argument that the availability of the defense of sovereign immunity in state court should violate procedural due process, while the availability of virtually the same defense in Federal Court does not.

D. Allowing Petitioner to Prosecute A Claim Under 42 U.S.C. § 1983 Would Turn § 1983 Into a Font of Tort Law

This Court has expressed the view that the Fourteenth Amendment was not meant to be turned into a font of tort law. *Paul, supra.* In *Parratt, supra,* the Court expressly disavowed an interpretation of § 1983 which would result in a situation where "any party who is involved in nothing more than an automobile accident with the state official could allege a constitutional violation under § 1983." *Parratt*, 451 at 544. If the Court allows petitioner to proceed under § 1983, the concern expressed in *Parratt, supra,* would most certainly come to pass.

The petitioner contends that it is clear that the respondents will prevail on the defense of sovereign immunity. The petitioner intimates that it is unquestionable under Maryland law that the respondents were performing a discretionary act. Maryland law is not as clear on this point as the petitioner would have the Court believe.

A discretionary act is one in which the official has the freedom and authority to make decisions and choices. *James v. Prince George's County,* 288 Md. 315, 418 A.2d 1173, 1179 (1980). The mere fact, however, that some decisions are made in performing a particular task is not determinative of whether or not the fact is discretionary or ministerial. *James*, 418 A.2d at 1180. For example, under Maryland law the driving of an emergency vehicle is an ministerial act.

James, 418 A.2d at 1180. A driver of an emergency vehicle has a minimal amount of discretion as to how he drives in that he must drive with due regard for the safety for all persons. *James*, 418 A.2d at 1180. If driving an emergency vehicle is a ministerial act, it would not be far fetched to argue that directing pedestrian and vehicular traffic does not involve the degree of discretion necessary to afford respondents the defense of sovereign immunity.

Petitioner also seems to contend that in allegedly allowing others to violate Maryland law the respondents were performing a discretionary act. It is inconceivable to think that sheriffs charged with a duty of enforcing Maryland law have any discretion whatsoever in deciding whether or not to enforce those laws. The duty to enforce the law would seem to be one of the clearest examples of a ministerial act.

The distinction between a discretionary and ministerial act is not at all clear. In ruling on a motion to dismiss a federal court would have to rule on the merits of the defense. *Juncker*, 549 F.Supp. at 579. In deciding that question the court would have to make the same finding of facts as those required to dispose of the case on the merits. *Juncker*, 549 F.Supp. at 579. A holding by this Court which allows a claim to be brought under § 1983 each time there is a dispute over the applicability of the defense of sovereign immunity would open the flood gates. The result would be a situation that the Court expressly stated in *Parratt*, *supra*, it wants to avoid.

In addition, a determination that the respondents were acting in a ministerial capacity would prevent them from raising the defense of sovereign immunity. This finding would moot petitioner's contention that she has no adequate remedy at state law as petitioner's remedy in state court can be affected only if the respondents prevail on the defense of sovereign immunity. *Juncker* 549 F. Supp. at 579.

III. Petitioner's Claim Under 42 U.S.C. § 1985 (3) Fails Because She Has Not Alleged Any Facts Supporting Her Conclusory Allegations That The Defendants Conspired To Deprive Her Of The Equal Protection Of The Laws And Equal Privileges And Immunities Under The Laws

The respondents adopt the views expressed in the brief of respondents S.L. Nusbaum & Co., Inc., and St. Mary's Square Merchants Association.

CONCLUSION

The petitioner has not alleged a deprivation of a liberty interest which is actionable under 42 U.S.C. § 1983. Even if the petitioner has alleged the deprivation of a liberty interest which is protected by the Constitution and the laws of the United States, the State of Maryland provides a remedy for the alleged negligent act which meets the requirements imposed by procedural due process notwithstanding the potential use of the affirmative defense of sovereign immunity.

The Petition for Certiorari should be denied.

Respectfully submitted,

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